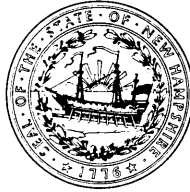


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FEB 3 1988

George S. Mouflouze
Deputy Chief, Liquor Enforcement
New Hampshire State Liquor Commission
Concord, New Hampshire 03301

Dear Mr. Mouflouze:

You have asked for our opinion as to the authority of the State Liquor Commission to revoke or suspend a written entertainment privilege issued pursuant to LIQ 404.12 which allegedly violates a city ordinance. Specifically, you have asked whether the Commission can revoke the approval it gave to the St. Charles Place Restaurant/Lounge to engage the services of live entertainment after learning that a Rochester city ordinance prohibits live entertainment in the zoning district where the restaurant is situated. In our opinion, the Commission has the authority to suspend or revoke the entertainment privilege.

RSA 178:11 provides in pertinent part:

If any licensee or permittee...allows the premises with respect to which the license or permit was issued to be used for any unlawful, disorderly or immoral purposes..., the license or permit of such licensee or permittee may be suspended by the commission without hearing, and may be revoked after notice and hearing.

The Commission, on October 13, 1987, approved the request of the St. Charles Place Restaurant/Lounge to engage the services of live entertainers. The Commission has the authority to grant such approval pursuant to LIQ 404.12 which provides, "On-sale licensees may provide dancing and entertainment on their licensed premises on application to the commission in writing."



Subsequent to the issuance of this approval, the Commission learned that a Rochester city ordinance prohibits entertainment in that particular district of the city. That ordinance provides:

No person, partnership, association or corporation shall use or operate or cause to be used or operated any mechanical device, machine, apparatus, or instrument for the reproduction, intensification or amplification of the human voice, music, or any sound or noise from any public or private place in such a manner that the peace and good order of the neighborhood is disturbed or that persons owning, renting or occupying property in the neighborhood are disturbed or annoyed.

The issue you have raised is whether or not LIQ 404.12 preempts the cited ordinance. The General Court has given the Liquor Commission the authority to regulate the manufacture and sale of alcoholic beverages in the State. See RSA 176 generally. Pursuant to that authority, the Commission has promulgated LIQ 404.12 which allows the Commission to give approval for live entertainment in conjunction with the sale of liquor. However, the regulation provides that the Commission "may" allow an on-sale licensee to provide entertainment. Although the word "shall" would not necessarily denote preemption, its absence is evidence that the Commission did not intend to have exclusive authority over this particular subject matter. See State v. Hutchins, 117 NH 924 (1977). Furthermore, the legislature has specifically empowered municipalities to regulate noise within a municipality. See RSA 47:15 XV. Consequently, the City of Rochester was free to enact a reasonable ordinance regulating noise levels. See Stablex Corporation v. Town of Hooksett, 122 NH 1091 (1982).

In view of this, it is our opinion, assuming that there is sufficient evidence, that the Commission has the authority to revoke or suspend the entertainment privilege granted to the St. Charles Place Restaurant/Lounge for two reasons. First, the use of the privilege is unlawful in light of the Rochester ordinance. Second, if there is evidence that the entertainment has disturbed residents living near the establishment, the Commission may find that the licensee is allowing the premises to be used for a disorderly purpose.

I trust that this has been responsive to your request. If you have further questions about this matter, please contact me.

Very truly yours,



Daniel J. Mullen
Assistant Attorney General